

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

April 27, 2012

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on April 27, 2012. Members present were Chairman Louis Stout, James Griggs, Barry Stumbo, Kathryn Moore, Jan Meyer, Noel White and Thomas Glover. Others present were Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Law Department. Staff members in attendance were Jimmy Emmons, Bill Saltee, Jim Marx and Wanda Howard.

At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. He administered the oath to those standing.

- II. **APPROVAL OF MINUTES** - The Chairman announced that there were no minutes to be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **A-2011-71: BALL and WRIGHT CAPITAL HOLDINGS** - appeals for an administrative review to allow a third wall sign on a bank building in a Professional Office (P-1) zone, on property located at 998 Governors Lane (Council District 10).

The Staff Recommends: Disapproval, for the following reasons:

- a. Article 17-7(e)1 of the Zoning Ordinance states that one wall sign per street frontage is permitted in the Professional Office (P-1) zone, with a maximum of two wall signs per building.
- b. There are no provisions in Article 17-7(e) for canopy signs in the P-1 zone.
- c. Permitting a third wall sign for this building would be contrary to a condition previously imposed by the Board (case # A-2010-27).
- d. The Board is not authorized to increase the number of permitted signs, pursuant to Article 17-8(a) of the Zoning Ordinance.

Mr. Emmons stated that the staff had received a request from the appellant to withdraw this appeal.

Representation – Mr. Richard Murphy, attorney, was present on the appellant's behalf to request a withdrawal of this application. Mr. Murphy said that he had already provided the staff with a letter requesting this action.

Action – The Chair declared that **2011-71: BALL and WRIGHT CAPITAL HOLDINGS** would be withdrawn.

- b. **V-2012-22: DR. PINKESH PATEL** - appeals for a variance to reduce the required front setback from 20 feet to 0 feet in order to allow a paved area to remain in front of the residence in a Planned Neighborhood Residential (R-3) zone, on property located at 2529 Pascoli Place (Council District 6).

The Staff Recommends: Disapproval, for the following reasons:

- a. The applicant has not provided sufficient justification related to special circumstances that might apply to this property and that do not generally apply to other properties in the immediate neighborhood.
- b. There are no other properties in this subdivision that have more than 50% of the front yard paved. Thus, the appellant's request would be out of character with its surroundings.

- c. There is adequate room on this lot for the applicant to redesign the off-street parking that would provide a handicap accessible parking area and meet the area and landscaping requirements of the Zoning Ordinance.

Mr. Emmons stated that the staff had received an e-mail from the appellant to withdraw this appeal. He stated that the appellant had decided to change the configuration of the front driveway so that a variance was no longer necessary.

Representation – The appellant was not present for this appeal.

Opposition – The Chair asked if anyone was present to object to this request. An unidentified resident of Tuscany spoke, saying he was in opposition to the variance, but not to the request for its withdrawal.

Action – The Chair declared that **V-2012-22: DR. PINKESH PATEL** would be withdrawn.

- c. **V-2012-27: BALL HOMES, LLC** - appeals for a variance to reduce the required 25-foot distance from the floodplain to 12.5 feet in order to construct a single family residence in an Expansion Area Residential (EAR-1) zone, on property located at 3829 Castlebridge Lane (Council District 7).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties, as the location of the proposed duplex is about 50' from the floodplain as approved by FEMA on Conditional Letter of Map Revision (CLOMR) case #09-04-8336R; and all of the necessary floodplain improvements between Hayes Boulevard downstream to the regional detention basin are complete and functioning properly, as per the approved CLOMR.
- b. The proposed structure is not located in the regulatory floodplain.
- c. Upon completion of all of the stormwater improvements within the 500+ acre Gess Development, and approval by FEMA of the final Letter of Map Revision (LOMR), this requested floodplain setback variance will no longer be necessary. Thus, there would be no circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship for the appellant, since a client had chosen this lot and the issuance of the LOMR appears to be some time in the future.
- e. The variance is not the result of the appellant's actions, as the possibility of this variance is noted on the current Development Plan approved for this location.

This recommendation is made subject to the following conditions:

- 1. This development of the subject property shall take place in accordance with the submitted application and site plan, or as amended by the Planning Commission.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction activity on the site.

Mr. Emmons stated that the staff had received an e-mail from the appellant requesting a one-month postponement of this appeal to the Board's May 18 meeting.

Representation – The appellant was not present for this appeal.

Action – A motion was made by Mr. Stumbo, seconded by Ms. White, and carried unanimously to postpone **V-2012-27: BALL HOMES, LLC** until the Board's May 18 meeting.

- 2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff had recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

#### ABBREVIATED HEARINGS:

- a. **V-2012-24: CROWN CASTLE PT COMPANY** - appeals for a variance to reduce the required setback

(1:1 height-to-yard ratio) for an existing cell tower to 0 feet in order to extend its height from 160 feet to 185 feet in a Planned Neighborhood Residential (R-3) zone, on property located at 370 Waveland Museum Lane (Council District 9).

The Staff Recommended: Approval of a variance to a 30-foot setback, allowing a 185' height for the monopole, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The monopole is immediately adjacent to a major electrical substation that had electrical transmission lines that are of a similar height and scale, which will minimize any visual impact the height extension might create.
- b. The small size of this lot with the existing cellular tower creates in an unusual circumstance in that it is smaller than most tower sites. This, together with the fact that the tower pre-existed the current height-to-yard ratio requirement justifies the need for the requested variance.
- c. Strict application of the 1:1 height-to-yard setback requirement would force the appellant to forego co-location of cellular facilities for this property altogether, which may result in an application for a new tower in this vicinity in order to meet the carrier's capacity needs. This would have a much greater impact on the surrounding area.
- d. The lot lines and the location of the tower were already in place when the Zoning Ordinance requirement for a 1:1 height-to-yard ratio were put in place. Additionally, there is no intent to circumvent a requirement of the Zoning Ordinance, but rather to co-locate the cellular facilities as encouraged by the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The monopole shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.

Representation – Ms. Cindy Shaffer, Crown Castle PT Company, was present for this appeal.

Chairman Stout asked if Ms. Shaffer had read and understood the two recommended conditions by the staff. Ms. Shaffer replied affirmatively. Chairman Stout asked if the appellant would agree to abide by the recommended conditions. Ms. Shaffer again replied in the affirmative.

Discussion – Mr. Griggs asked about the notification area involved for this variance. Mr. Emmons stated that the notification area was 200' in radius.

Mr. Griggs asked if there was a strobe light on the top of this tower. Ms. Shaffer replied that there was a beacon on the top of the tower. She said that it is a red light that is required by the FCC in order to notify aircraft. Mr. Griggs asked if it was a blinking light. Ms. Shaffer replied affirmatively. Mr. Griggs asked if there have been studies done to study the light impacts of these beacons. Ms. Shaffer replied that red light does not have nearly the same effect on neighbors at night as white light does. She said that there have been such studies, but she did not have those studies with her at this meeting. Mr. Griggs asked if it was directed downward. Ms. Shaffer replied that the light was set at an angle where it was not directed downward, but rather, only upward and horizontally. Mr. Griggs replied that he was concerned about not creating a disturbance to the area residents. Ms. Shaffer replied that this light would not be any stronger than the one already situated on the existing tower, as the increased height would not have a need for more lights.

Chairman Stout said that there was such a tower in his neighborhood; and unless one was to look up at it, it was not a nuisance.

Mr. Glover asked if the tower was regulated by the Federal Aviation Administration. Ms. Shaffer replied affirmatively. Mr. Glover asked if the light was required by the FAA. Ms. Shaffer again replied in the affirmative. He asked if the number and strength of the red light was also an FAA requirement. She replied that these were FAA conditions for their tower, but that they would not have to light the tower, since it would still be below 200' in height. Mr. Glover asked that if the tower collapsed, who would be damaged. She replied that the electric substation might be damaged. He asked if the nearby residential properties would be impacted by such a collapse. Ms. Shaffer replied that the tower would not endanger those homes, as they are designed, not to "fall over;" but instead, they are engineered to collapse within themselves.

Mr. Emmons said, in reply to the earlier question about the notification for this appeal, that 42 property owners were sent a letter about today's public hearing, as were the two nearest neighborhood associations—Southpoint and Pickway. Mr. Griggs asked if the staff had received any feedback from either of those associations. Mr. Emmons replied negatively, and said that there had not been any phone calls or e-mails received about this request.

Ms. Meyer said that this request makes sense to go up with an existing tower, rather than to require an additional tower in the area.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried unanimously to approve **V-2012-24: CROWN CASTLE PT COMPANY** – an appeal for a variance to reduce the required setback (1:1 height-to-yard ratio) for an existing cell tower to 0 feet in order to extend its height from 160 feet to 185 feet in a Planned Neighborhood Residential (R-3) zone, on property located at 370 Waveland Museum Lane, for the reasons provided by the staff, and subject to the two conditions recommended by the staff.

- b. **C-2012-14: TOM CHEEK** - appeals for a conditional use permit to occupy an existing building as a rehabilitation/indoor athletic club facility in a Wholesale and Warehouse Business (B-4) zone, on property located at 1868 Plaudit Place (Council District 6).

The Staff Recommended: Approval, for the following reasons:

- Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This site is well suited to accommodate the proposed athletic club facility, even with 60% of the floor area of the building devoted to office use.
- All necessary public facilities and services, including storm and sanitary sewer service, are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

- The athletic club facility shall be built and operated in accordance with the submitted application and site plan, or as amended by the Planning Commission.
- All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to any remodeling, construction and/or occupancy.

Representation – Mr. Tom Cheek, architect, was present on behalf of this project.

Chairman Stout asked Mr. Cheek if he had read and understood the two conditions recommended by the staff. He replied affirmatively. Chairman Stout asked if the appellant would agree to abide by the recommended conditions. Mr. Cheek replied in the affirmative. Chairman Stout asked if there were any citizens present to comment on this appeal, and there was no reply from the audience members.

Action – A motion was made by Mr. Stumbo, seconded by Ms. White, and carried unanimously to approve **C-2012-14: TOM CHEEK** – an appeal for a conditional use permit to occupy an existing building as a rehabilitation/indoor athletic club facility in a Wholesale and Warehouse Business (B-4) zone, on property located at 1868 Plaudit Place, for the reasons provided by the staff, and subject to the two conditions recommended by the staff.

- c. **C-2012-23: PROVIDENCE MONTESSORI SCHOOL, INC.** - appeals for a conditional use permit to expand the existing school (converting an existing garage to classroom space and expanding the toddler program) in a Single Family Residential and a Planned Neighborhood Residential (R-1C/R-3) zone, on property located at 1209 Texaco Road (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed expansion of the toddler program will not have a negative impact on the surrounding uses because this rear corner of the property, although located near institutional and commercial uses, is adequately buffered by an existing fence, treeline, and other vegetation.
- All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The building and corresponding site changes shall be done in conformance with the proposed site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. All parking areas shall be paved with spaces delineated, and landscaped/screened in accordance with the provisions of Articles 16 and 18 of the Zoning Ordinance.
5. Any pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining and nearby residential properties.

Representation – Ms. Pam Clements, architect with Lucas-Schwering Architects, was present on behalf of the appellant.

Chairman Stout asked Ms. Clements if she had read and understood the five conditions recommended by the staff. She replied affirmatively. Chairman Stout asked if the appellant would agree to abide by the recommended conditions. Ms. Clements replied in the affirmative. Chairman Stout asked if there were any citizens present to comment on this appeal, and there was no reply from the audience members.

Action – A motion was made by Ms. White, seconded by Ms. Meyer and carried unanimously to approve **C-2012-23: PROVIDENCE MONTESSORI SCHOOL, INC.** – an appeal for a conditional use permit to expand the existing school (converting an existing garage to classroom space and expanding the toddler program) in a Single Family Residential and a Planned Neighborhood Residential (R-1C/R-3) zone, on property located at 1209 Texaco Road, as recommended by the staff and subject to the five recommended conditions.

- d. **C-2012-25: ROOD and RIDDLE EQUINE HOSPITAL** - appeals for a conditional use permit to expand the existing equine hospital facility (pharmacy and training center) and add parking in an Agricultural Urban (A-U) zone, on property located at 2150 Georgetown Road (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This is a well-established equine hospital with numerous facilities. The new building will be located away from adjoining residential properties, with adequate screening provided by an existing tree line along Georgetown Road.
- b. All necessary public and private services are available and adequate for the proposed use, and storm water management will be provided in accordance with the requirements of the Engineering Manuals.

This recommendation of approval is made subject to the following conditions:

1. The new building shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Representation – Mr. Roger Ladenberger, landscape architect, and Mr. Jeff Pearson, architect, were present on behalf of the appellant.

Chairman Stout asked Mr. Ladenberger if he had read and understood the three conditions recommended conditions by the staff. He replied affirmatively. Chairman Stout asked if the appellant would agree to abide by the recommended conditions. Mr. Ladenberger again replied in the affirmative. Chairman Stout asked if there were any citizens present to comment on this appeal, and there was no reply from the audience members. Chairman Stout complimented the appellant, saying that theirs was “a good looking facility.”

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs and carried unanimously to

approve **C-2012-25: ROOD and RIDDLE EQUINE HOSPITAL** – an appeal for a conditional use permit to expand the existing equine hospital facility (pharmacy and training center) and add parking in an Agricultural Urban (A-U) zone, on property located at 2150 Georgetown Road for the reasons recommended by the staff and subject to the three recommended conditions.

- e. **C-2012-26: LINDA DeROSETT** - appeals for a conditional use permit to establish a Montessori school in an existing church in a Two-Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 530 East High Street (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Other than an outdoor play area for the school, the minor changes proposed for the property are interior to the church, and the hours of operation will not coincide with the regularly scheduled church activities.
- b. All necessary public facilities and services are available and adequate for the proposed use, and an outdoor play area will be provided that will serve the school use on the property.

This recommendation of approval is made subject to the following conditions:

1. The school for academic instruction shall be built and operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction, and an Occupancy Permit shall be required for the church to also serve as a school for academic instruction.
3. No construction of the outdoor fenced play area shall commence until a Certificate of Appropriateness had been issued by the Division of Historic Preservation.

Representation – Ms. Linda DeRosett was present on behalf of Village Montessori School.

Chairman Stout asked Ms. DeRosett if she had read and understood the three conditions recommended by the staff. She replied affirmatively. Chairman Stout asked if the appellant would agree to abide by the recommended conditions. Ms. DeRosett replied in the affirmative. Chairman Stout asked if there were any citizens present to comment on this appeal, and there was no reply from the audience members.

Discussion – Ms. Moore asked if there would be principally classroom instruction at this school. Ms. DeRosett replied that there would be some classroom instruction with a Montessori curriculum. She said that the rest of the day would involve individual instruction and creative play time.

Ms. Moore asked if the request had been for a day care center at this church, then would it also be a conditional use. Mr. Emmons replied affirmatively.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover and carried unanimously, to approve **C-2012-26: LINDA DeROSETT** – an appeal for a conditional use permit to establish a Montessori school in an existing church in a Two-Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 530 East High Street based upon the staff recommendation, and subject to the three recommended conditions.

- f. **A-2012-21: JERSEY STREET, LLC** - appeals for an administrative review to allow a change in legal non-conforming use (warehouse storage to retail sales) in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 431 Jersey Street (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. The requested use of retail sale of shoes, clothing, and similar merchandise will not be an increase in scope, nor will it negatively alter the character of the surrounding properties, as long as the applicant can secure a parking agreement with one of the surrounding parking lots for the 4 additional parking spaces that would be needed for this use.
- b. The proposed changes to the building have been approved by the Board of Architectural Review and do not constitute a structural change to the building that could otherwise be construed as an expansion of the non-conforming use.

This recommendation is subject to the following conditions:

1. The property shall be used in accordance with the submitted application and site plan, except as may be amended by the Board of Architectural Review.
2. Prior to the issuance of a Zoning Compliance Permit and the Certificate of Occupancy, the applicant shall obtain a parking agreement for a minimum of 4 off-site parking spaces.

Representation – Mr. John Brueger, attorney, was present on behalf of the appellant.

Chairman Stout asked Mr. Brugger if he had read and understood the two conditions recommended by the staff. He replied affirmatively. Chairman Stout asked if the appellant would agree to abide by the recommended conditions. Mr. Brueger replied in the affirmative. Chairman Stout asked if there were any citizens present to comment on this appeal, and there was no reply from the audience members.

Discussion – Ms. Moore asked the staff to explain the statement in their report that this would involve a less intensive use of the subject property. Mr. Emmons replied that the current use was a non-conforming B-4 use in an R-2 zone. The B-4 zone would allow more intensive uses than those first permitted in a Neighborhood Business (B-1) zone. The appellant's proposed retail use was allowed in a less intense zone. The staff reviewed this proposal in the neighborhood context and also in light of the parking needs for the proposed use. The new non-conforming use will have a small amount of retail space and proposes to continue the non-conforming warehouse use that has historically been at this location. The staff did not believe that this new use would create any burden to the surrounding neighborhood.

Ms. Moore asked about the new retail use, saying that there are greater parking requirements and usually more people visiting the site when compared to a warehouse. Mr. Emmons replied that the staff reviewed that, but the primary issue was the schedule of zones where uses are first permitted. The zones are arranged in the order of their intensity.

Ms. Meyer asked if this retail use were to close, if another conditional use could occupy the space. Mr. Emmons replied that if the future user were substantially similar to this use, it could. For example, if another shoe store wished to occupy this building, that would not have to come back before the Board. However, if a use such as a nightclub or restaurant desired this space, such a request would have to return to the Board for consideration.

Action – A motion was made by Mr. Stumbo, seconded by Ms. White and carried unanimously to approve **A-2012-21: JERSEY STREET, LLC** – an appeal for an administrative review to allow a change in legal non-conforming use (warehouse storage to retail sales) in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 431 Jersey Street, with the conditions set forth by the staff.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

**D. Conditional Use Appeals**

1. **CV-2012-11: TOWNES ENTERTAINMENT, LLC** - appeals for a conditional use permit for a restaurant with live entertainment; and variances to 1) reduce the required 100-foot setback from a residential zone to 0 feet, and 2) reduce the required parking by 50% in a Neighborhood Business/Historic District Overlay (B-1/H-1) zone, within the defined Infill & Redevelopment Area, on property located at 122 W. Maxwell Street (Council District 3).

The Staff Recommended: Approval of the requested setback and parking variances, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. This property is split-zoned; the northerly portion with the building is in a Neighborhood Business (B-1) zone, and the southerly portion, developed with a parking lot, is in a Two Family Residential (R-2) zone. The zone boundary is located very close to the back side of the building, which explains the request to reduce the required setback to zero feet. Additionally, based on the hours of operation, and the pedestrian-oriented nature of this area, the parking reduction to 50% of the required parking is justified.
- b. The existing parking lot in an R-2 zone, which is a part of the subject property, is a special circumstance that contributes to justifying the need for the requested variances.
- c. Strict application of the 100-foot setback requirement would force the appellant to forego the live entertainment and/or dancing for this property.
- d. The number of parking spaces and the location of the zone lines were existing when the appellant purchased the property. Thus, this request is not the appellant's actions. In fact, the area was originally developed prior to the predominance of the automobile, thereby explaining the pedestrian friendly nature of the area.

The Staff Recommended: Approval of the requested conditional use for live entertainment and/or dancing, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, if the appellant adheres to conditions of approval. Adjoining and nearby properties are a mix of commercial and residential uses, and are not expected to be disturbed by the proposed entertainment activity. Adequate off-street parking will be provided.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The addition of live entertainment and dancing shall be undertaken in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to renovation and/or construction and prior to opening the establishment.
3. The building shall be soundproofed to the maximum extent feasible using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood. (Staff will report further on this condition at the hearing.)
4. No outdoor speakers that would be used to broadcast the live entertainment to the patio area or to otherwise use the patio area as an extension of the live music and/or dance floor will be allowed. Outdoor speakers designed and used to allow ambient music on the patio area would be acceptable, just as it would be for any restaurant use without live entertainment or dancing.
5. The Division of Planning's Zoning Enforcement section shall report to the Board (at the minimum) in 6 months and 1 year from the date of approval of this application regarding compliance with the conditions of approval and the extent of any complaints that have been received for the subject property.

Staff Report – Mr. Emmons presented the Staff Report on this appeal. He directed the Board's attention to a Supplemental Staff Report distributed at the start of today's meeting. He stated that both a conditional use permit and two dimensional variances were requested, including a 50% reduction proposed to the required parking. Mr. Emmons said that the original Staff Report recommended approval of the two dimensional variances, and that portion of the staff's recommendation remains unchanged. He said that the staff was also recommending approval of the requested Conditional Use Permit, with five recommended conditions. Condition #3 of that recommendation had been expanded

upon in the Supplemental Staff Report, which also contains some additional research information for the Board, as follows:

**The Staff Recommends: Approval of these additional conditions:**

- 3) The building shall be soundproofed to the maximum extent feasible using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood. It is further recommended/required that:
  - a. The doors to the patio area, or any other doors that open to the outside, will not be propped open during any live entertainment performance.
  - b. Speakers, whether provided as a part of a permanent in-house sound system or set up by the individual performers, will be installed in such a way that sound is not directed toward the patio doors.
  - c. The applicant shall inform the Division of Planning, Zoning Enforcement Section, of any additional soundproofing technologies that are employed after the date of occupancy, and the dates of their installation.

Mr. Emmons said that the staff had researched what could be done in an attempt to mitigate the possibility of disturbances to area property owners from the proposed live entertainment. He said that the LFUCG Noise Ordinance is in effect, and would be applicable to the proposed use at this location. He said that the staff had discussed this Ordinance with members of the Division of Police, as they have the responsibility of enforcing this ordinance. An officer may direct the abatement of a disturbance, or may issue a citation for a violation.

Mr. Emmons said that the staff had also researched soundproofing technologies. He said that the individual location plays an important role in noise mitigation, as the physics of sound waves are complex. He said that, oftentimes, the simple solutions are the most effective ones. At this location, the live entertainment will be indoors. Still, the staff was recommending that the interior doors that open upon an outdoor patio not be propped open; and also, that speakers not be directed toward South Upper. Also, the staff recommends that the appellant inform the Zoning Enforcement section of any additional soundproofing technologies, so that those may be taken into account if any complaints are received. Mr. Emmons said that the staff also recommends that this use have a report back to the Board between six and twelve months after its use was begun.

Mr. Emmons distributed two letters of opposition to this request for review by the Board. He then displayed several photographs of the subject property on the overhead projector. The first was looking to the southeast at 122 West Maxwell Street, and he identified the street system and the Joe Bologna's Italian Restaurant. He also identified the off-street parking area with a photo viewing the property from the south. Since that lot is in a residential zone, a dimensional variance is needed for that setback. He identified the outdoor patio area between the proposed use and South Upper Street, and the Cigar Flats residential development immediately across South Upper from the subject property. He said that, from the exact location of the proposed live entertainment use, it was more than 100' from the nearest residential dwelling. He said that if that entertainment use moved outdoors to the patio, it would be immediately across the street from nearby dwellings.

Given the research that had been conducted, Mr. Emmons said that the staff was comfortable recommending approval of this conditional use permit and the necessary dimensional variances.

**Question** – Chairman Stout asked if the Gambino's nightclub had been approved by the Board of Adjustment. Mr. Emmons replied that it had not ever been before the Board for consideration. They were in operation without any approvals, and were in violation of the Zoning Ordinance.

**Opposition** – Mr. Mike Kovash, 371 South Upper Street, spoke in opposition. He said that his home was about 300' from the corner of the building where the live entertainment was proposed, and that he had lived in this home for the past twelve years. He said that he was a member of the Board of the Historic South Hill Neighborhood Association, and that he had participated in the recent discussions with this appellant. He also stated that he was a member of the Historic Preservation Commission, but he was not representing that group at this hearing.

Mr. Kovash read a letter of opposition into the record. He said that the Historic South Hill Neighborhood was "fragile" and that it was situated between the UK campus and the downtown. He said that his home

was more than 200 years old, and that Cigar Flats was an adaptive reuse of an old building.

Mr. Kovash said that the previous bars at this location, Gambino's and Gusto's, were both student-oriented bars that had live music until 1:00 or 2:00 AM. The Police were generally unresponsive to neighborhood complaints about these two bars; and, thus, the noise continued for many years, until the bars closed. He said that the average life span of these bars was about 3-4 years.

Mr. Kovash said that 1½ years ago, another bar with live entertainment, also needing a variance and a conditional use permit, was denied by the Board of Adjustment, as it was opposed by the South Hill Neighborhood Association. The appellants for the current request seem to be committed to working with the neighborhood; however, he was concerned that the dimensional variances, if approved, would stand for all future tenants as well. He, therefore, asked that the variances be "bullet-proof" for the neighborhood, in the event that less-accommodating future tenants were in operation at this location.

Mr. Kovash said that the Planning Staff recommended approval for this use, based upon a set of conditions, which, if enforced, would limit the noise impacts of the proposed use. He said that there were other, similar conditions proposed by the Board of the Neighborhood Association to limit this use. They would minimize the potential for a noise disturbance to the neighborhood, and he was pleased that this possibility was identified. He said that enforcement was an explicit component for this proposed conditional use. He said that both set of conditions weighed heavily on the Neighborhood Association Board's decision on this request.

Mr. Kovash distributed copies of KRS 100.243 to the Board, regarding the findings necessary for granting any dimensional variance. He read the provisions of this section, reminding the Board that the granting of a variance may not cause a nuisance in the neighborhood. He said that it was unequivocal. He and his neighbors most fear the nuisance of noise disturbances in the wee hours of the night. He asked if the Board could make the finding in this case, that the proposed business will not cause a nuisance. He asked if the Board could reasonably rely upon adherence to the proposed conditions to guarantee that the approval of the variance would not lead to a nuisance. According to KRS, this was essential, and the conditions must be enforceable. Mr. Kovash said that the burden for this would rest with the neighborhood. It was the "thump of a baseline" and not something quantifiable in this case. He said that the LFUCG Noise Ordinance had no quantifiable measure of what constitutes a noise disturbance. What might be a disturbance to the neighbors might not be one to a policeman or to the Planning enforcement officials. He distributed a copy of the Noise Ordinance to the Board members. He noted his concern that the conditions recommended by the Planning staff were vague and undefined. Mr. Kovash said that the neighbors were under the burden to show that the nuisance was real because the conditions proposed were vague and unenforceable.

Mr. Kovash summarized his objections by saying that 1) there was a long history of noise disturbances from bars at this location, and 2) the City government had demonstrated that it can not enforce the Noise Ordinance, in part, due to its vague nature. However, the Planning staff was now recommending that the Board consider approval of this use based upon the enforcement of a vague set of conditions involving late night noise. He was not sure that this could be done. He asked how the neighbors could exercise due process when this use would be predicated upon ill-defined standards. He respectfully suggested that the necessary findings could not be met, and thus, the variances should be denied in this instance.

Mr. Joe Bologna, restaurant owner for 39 years at the corner of West Maxwell and Jersey Street, spoke in opposition. He said he wished to address the parking situation for this proposed use. He said that he used to employ a parking attendant to ensure customer safety. He said that the lot south of his restaurant and this proposed use had 71 spaces, which were shared by nine businesses during the daytime hours. However, after 5:00 PM, these spaces are the most convenient for his customers. He said that his restaurant was somewhat unusual compared to the others between him and the UK campus, as 90% of his business drives to his restaurant from all over the city. He was always able to share this parking and "work together" in the past with those that have leased this space.

Mr. Bologna said that the new LexPark meters were a good thing in this area, and he suggested that they extend the hours for metered parking into the evening so that on-street parking would turn over in the evening hours. He thanked the Board members for their consideration.

Mr. John Long, 419 South Upper Street spoke in opposition to this request. He said that he lived across from Joe Bologna's parking lot. Mr. Long appreciated the staff's recommendation, but asked why it was the responsibility of the neighbors to enforce the noise levels for this use, when the Noise Ordinance was not that clear. He said that there was technology available to mitigate this problem. He said that there were decibel-level instruments that could turn off the sound equipment in the establishment if they exceeded a certain amount.

Mr. Long said that the neighbors had met with the appellants on several occasions, and he found them reasonable. He also said that they had conducted a "sound test" at this location for the neighbors' benefit. He said that a sound engineer had installed a sound system in the space, and then measured the decibels at the nearest residence, and agreed on what all thought was a reasonable level. However, they have not resolved how noise disturbances above that level would be remediated. He said that the appellants had offered to install soundproofing materials in the space to help contain the noise. Still, there was no way of knowing when that is all done, how exterior disturbances would be mitigated.

Mr. Long said he would not be opposed to another good restaurant being opened in the area, but he was very worried about the proposed live entertainment. He felt that two things needed to be done. First, he suggested withholding the Certificate of Occupancy until the remediation on the sound had been installed, and deemed fair and equitable. Secondly, he thought that if the Police had to be called to this site on three occasions for excessive noise, then the conditional use would be pulled. Still, he said he would be willing to work with this appellant if these two considerations were employed.

Mr. Long said that one year ago, he asked if bricks could be placed in his small front yard, because they were "not historical." He thought it ironic that just a few feet beyond the boundary of the Historic District, there was a serious proposal to allow live entertainment without any enforcement, but relying upon a common sense approach for its regulation.

Mr. Kerry Cauthen, a resident in Cigar Flats at 415 South Upper Street, spoke in opposition. He said that he believed that his home was the one dwelling located closest to the proposed conditional use. He said that he had a strong investment in the neighborhood, and he had been there for 12-14 years. He said that he seen good and bad establishments "come and go." He said that one of the best was the Holy Grail, but it did not survive. He said that Gambino's was, quite literally, a nightmare. His children are four and two years old, and he said it was not uncommon for them to awake at night. He felt it important that this use be examined with extreme caution and with ample consideration for the neighborhood.

Mr. Cauthen agreed with Mr. Long that the appellant had been reasonable and had tried to work with the Neighborhood Association. Still, he did not believe that this location was appropriate for live entertainment. However, he said that with the correct conditions, and serious enforcement, there might be some possibility for it here. He said that during the sound test, conducted at his front door, 72 decibels was the level where noise was not terribly disturbing. He asked that this be "written in" to the conditions for this use. He also liked the "three strikes" provision offered by Mr. Long. He felt that their concerns were related to being abused by past enterprises at this location. He also supported the staff's provision that the patio doors not be open while the business was in operation.

Mr. Cauthen summarized his position by saying that he desired quantifiable conditions for this use, a measure for what is not acceptable, meaning the 72-decibel level should be enforced, and that real enforcement occur. He believed in the good faith of the appellants, but he was worried about future entrepreneurs at this location.

Neighborhood Association Presentation – Mr. Lee Thomas, President of the South Hill Neighborhood Association, spoke to this request. He said that they had many discussions with the appellant, and their preference would be for a non-musical occupant for this space. However, they were dealing with the application at hand.

Mr. Thomas said that the recent sound test was of major importance to the members of the Board of the Neighborhood Association. He said that the Board voted 7-1, with one member absent, to recommend conditional approval of this use. The conditions associated with their recommendation for approval

were, first and foremost, that no music speakers or entertainment could be located on the patio, meaning all music must remain indoors. Secondly, he said that the stage and speakers must face away from Upper Street, and the doors to the patio must be for an emergency exit only. He said that it was important that these be hardwired for this purpose, as any exit through those doors would create a disturbance to the neighbors.

Question – Mr. Griggs asked if the patio was not proposed for use with this restaurant. Mr. Thomas replied that, after 10:00 PM, it was not proposed to be used. He said that the appellant could explain this further. He said that the music would then begin after the patio was closed.

Mr. Thomas said that it was important that there be sound dampening and Plexiglas affixed to the existing windows, as well. He said that the 72-decibel level was important in that it had been measured, and was a level agreeable both to the appellant and to the neighbors. He said that a police officer might not determine that a 92-decibel sound was a nuisance, but to the neighbors, it would be. He said that the neighborhood would buy the Planning Commission a noise meter for this purpose. He said that this was something all parties could agree to.

Mr. Thomas said that if three complaints were submitted to the police or to the Planning Division, then a revocation hearing should be scheduled for this applicant, or for a future appellant.

In addressing the first condition recommended by the staff, Mr. Thomas asked if the application was for music AND for dancing. Mr. Emmons replied that he would quickly check the application to see if dancing was mentioned. He worried that at 10:00 PM, the appellant could remove the tables and chairs and offer dancing. This would greatly change the dynamic of the space, in his opinion, especially in terms of noise.

Mr. Thomas commented on the staff recommendation allowing outdoor speakers, as would be allowed for ambient music for any restaurant with a patio. Mr. Thomas said that with a specific sound level, this would not be subjective. Mr. Thomas asked about the occupancy of the building. Mr. Emmons replied that about 150 seats would be permitted for a restaurant. This was somewhat dependent upon the number of outdoor seats proposed. Mr. Thomas said that the removal of tables and seating was important to the neighbors; as when conditions are general, instead of specific, "things are hard to control."

Mr. Thomas said that the Neighborhood Association had voted to approve the appellant's request, although many of the issues he raised could be construed as being in opposition.

Appellants' Presentation – Mr. Josh Brown and Mr. Doug Welch were present on behalf of the appellant. Mr. Welch said that they wished to address many of the concerns expressed at today's meeting. He said that, in looking over the proposed conditions and the results of the sound test mentioned earlier, he felt that there should be no worries with their operation.

Mr. Welch placed a diagram on the overhead projector displaying a diagram of their site plan, highlighted to identify their parking lot. He said that they planned to open for lunch, and said that they have a plan for providing parking until the time they begin their live entertainment in the evening hours. He said that Mr. Kaufmann had allocated 14 spaces to their use in the main parking lot. In addition, there are on-street parking spaces, which have no charge after 5:00 PM. After 5:00 PM, they are allocated an additional 12 spaces in the existing parking lot for their use, making a total of 26 spaces available. At 10:00 PM, when Joe Bologna's closes, the entire parking lot becomes available for their use. He said that there was a lot of pedestrian traffic in this area, and that there was a Colt Trolley stop in close proximity to their location. He hoped that they could work out a 10% discount for those that use taxis to come to their restaurant. He then displayed a second graphic, identifying a bar graph that shows that 14 spaces are available in the parking lot until 5:00 PM, that 26 spaces are available from 5:00-10:00 PM, and that 65 spaces are available from 10:00 PM on. The purpose of this was to show that as their need for additional parking increases, the availability of parking increases as well.

Mr. Brown described the sound test conducted Tuesday in the presence of some of these neighbors. He said they played some loud music, with a lot of base. He said that he did not want to deal with Ms. Cauthen each night, being angry that their music was making a disturbance. He said that they had met

with members of the Neighborhood Association four times, in an attempt to “get on the same page” with them. He said that the 72-decibel level agreed to between the appellant and the Neighborhood Association was measured outside of the restaurant, and not inside—he felt it important to clarify that information for the Board. He said that they did not want to be in violation of the local Noise Ordinance.

Mr. Brown said that their concept would be most similar to a restaurant that one might find in Austin or Nashville. He said that he and Mr. Welch had experience in the operation of restaurants, and this was an initial venture for them both. He also said that they are passionate about good music as well. He said that there are other venues in close proximity to their location where live music was available for patrons. He said that this was a near-university area, and yet they understand that there are neighbors in close proximity, as well.

In speaking to the conditions recommended by the staff, Mr. Brown said that he felt they were reasonable. He said that if they install the maximum amount of sound-proofing, then he did not anticipate there being any problems.

Mr. Welch said that Phillip Osborne of DW Sound visited the site the other day, and he was pleasantly surprised with the sound test. He said that double-paning the windows would dampen the sound and would contain it by about 85%. He said that they were fine with the 72-decibel level standard, and he didn't think this would pose a problem.

Discussion – Chairman Stout asked the appellants when they hoped to open this establishment. Mr. Welch replied that they were hoping to have their conditional use approved in order to secure their financing. He felt that their financiers wanted assurance that their concept was sound in order to secure their funding sources and go forward.

Mr. Griggs asked if their business model required the live entertainment. Also, he said that the neighbors' “three strikes and you're out” suggestion would mean that the conditional use permit could be revoked. Mr. Brown asked for more clarification on those provisions. He asked how frequently the “three strikes” would be imposed, whether annually or throughout the life of the business. Mr. Griggs replied that this would only affect the live entertainment, as the neighbors had not objected to there being a restaurant at this location; and, in fact, he heard that the neighbors would like to have Mr. Brown and Mr. Welch operate there. Mr. Brown said that he understood, and that they could probably operate without live entertainment, but that was not what they wanted to do. Their business concept places importance upon the live entertainment being offered there. They are investing their money in this venture, and they are passionate about having good music at this venue. Mr. Brown said that he was not opposed to the “three strikes,” in concept, but he would request clarification on the timing of the duration. Mr. Griggs asked if Mr. Brown needed more time to discuss this point with the neighbors. Mr. Thomas responded that “three strikes” in a year was reasonable for this use, and Mr. Brown concurred.

Chairman Stout applauded the appellants for working with the neighbors. However, he said that before the appellants agree to such things, he felt that they should sit down with the neighbors and agree, in writing, to the conditions by which this use will operate. Chairman Stout said that he did not have a problem with their application, but he thought that they would be better served to continue this hearing until the appellant could sit down at the table with the neighborhood. He thought it would be better for them to work out the operating conditions rather than have the Board to do so hastily. Mr. Brown asked how long this would be continued. Chairman Stout replied that he felt one or two months should be sufficient, given that they do not wish to open for another year or so. He said that no one wanted to see them fail in this business.

Mr. Glover asked about the wording of recommended Condition #5. He wondered what would be the Board's authority if violations were discovered to this condition. Mr. Sallee said that the purpose of that condition was to allow the Board to see if all the conditions were being met and, if not, to identify the extent of their violation. He said that if there were some conditions not being met by the appellant, then the Board could schedule a revocation hearing.

Ms. Moore asked if that condition should be changed to allow the review after the issuance of the Certificate of Occupancy, since it might be another year before this use commences. Mr. Sallee replied that that would certainly make sense to do so.

At this time, Mr. Brown asked the neighbors present if they wished to continue to dialog about their proposed use. Mr. Thomas recommended that the appellant take Chairman Stout's suggestion seriously, and they thought it appropriate to meet outside of this hearing.

Mr. Thomas asked for clarification about whether this or a future appellant would be permitted to remove table seating to allow for increased occupancy for dancing and live entertainment. Chairman Stout suggested that they confer with the staff on this point. Mr. Thomas asked the staff if they could be of assistance on this issue. Mr. Sallee replied affirmatively, and said that the conditional use permit was only applicable to the live entertainment portion of this operation. He said that an increase in restaurant seating would be permitted independently of the Board's approval of this conditional use, provided the off-street parking requirements could be met. Mr. Thomas asked if decreasing the seats for the live entertainment use would allow an increased number of patrons. Mr. Sallee responded that the staff had not heard from the Fire Marshall about the occupancy load regarding the number of patrons allowed in this location. Mr. Thomas was concerned about the possibility that the number of seats in the restaurant might decrease, and the number of seats for the live entertainment might increase for a future proprietor. Mr. Sallee replied that that type of change would require future approval by the Board.

Ms. Moore said that there was another item the neighbors might want to discuss with the appellant. In the past, the Board had placed a restriction that the Conditional Use Permit is only granted to an individual appellant, and would become null and void if it were abandoned. Ms. Boland said that the staff had discussed this. She said that with an LLC, it was difficult to determine when ownership was really different, and the use would become null and void. She told the neighbors that it would be more important and encouraged them to negotiate the conditions for operation by this appellant or a future proprietor that might operate under the same conditions. She said that this would be far preferable to a detailed review of when an LLC might actually have changed ownership.

Mr. Stumbo asked the appellant if a 30-day continuance would allow enough time. He said that rarely had he seen an appellant work so well with a neighborhood. He thought that there might be some other issues and solutions that the two groups should seriously discuss, should this request be continued. Mr. Sallee added that that Board's May meeting was only three weeks from the date of this hearing. Chairman Stout said that that would not be enough time. He felt that additional time would be warranted, and asked the appellants if they would be so inclined. Mr. Brown and Mr. Welch both replied in the affirmative.

Action – A motion was made by Ms. Moore, seconded by Mr. Stumbo and carried unanimously to continue consideration of **CV-2012-11: TOWNES ENTERTAINMENT, LLC** until the Board's June meeting.

IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time. There were none presented at this time.

V. **STAFF ITEMS** - The Chair announced that any item a Staff member wishes to present would be heard at this time.

A. Rochelle Boland's Birthday – Mr. Emmons said that the staff would like to wish Ms. Boland a Happy Birthday. Chairman Stout agreed with this sentiment, and wished her the same on behalf of all the Board members.

B. Request for a Revocation Hearing – Mr. Marx said that it was his duty to report to the Board some activities that had recently been taking place at 824 Winchester Road. He said that this was at the corner of Dayton Avenue and that two years ago, on March 26, 2010, the Board approved a conditional use permit for a small church at this location. The applicant at that time was Inner City Breakthrough Ministries; and less than a year later, that church abandoned the property, and disassociated themselves with all activities taking place at that address.

Mr. Marx said that a short time later, the Immanuel Apostolic Church, in association with the Catholic Action Center, took over operation of the facility. Under the name "Community Inn," it began offering overnight accommodations at this location to persons in need. He said that the Board's original approval did not have a "null-and-void" condition, so it was allowable for another entity to take over the conditional use permit, provided they complied with all of the conditions the Board originally imposed.

Mr. Marx said that the staff had submitted a report to the Board about this use, and that Condition #1 of their

March 26, 2010 approval required that they conduct activities as represented in the application. Specifically, he said that their approval required that "the use be conducted in accordance with the submitted application and site plan." The activities would be Sunday morning services at 8:00 AM & 11:00 AM, Thursday morning "Transforming the Mind" classes at 9:30 AM & 11:30 AM, Thursday evening Bible study at 6:00 PM, and bus service for 75% of their members. He said that there was no representation that the facility was to be used to provide overnight accommodations for persons in need.

Mr. Marx said that there was no dispute that the Catholic Action Center, along with the Immanuel Apostolic Church, had been open about the continuation of their operation of a homeless shelter at this location. This had been confirmed by numerous staff observations and by personnel in the Division of Fire & Emergency Services as well as the Division of Police. There have been meetings with the Division of Building Inspection about expanding the accommodations into the second floor.

Mr. Marx said that condition #5 required that this use maintain a parking agreement for at least four parking spaces from the adjacent property at 911 Dayton Avenue. This was an important issue, because this was a very small property. It was approved for only 30 sanctuary seats, and the minimum parking requirement was for six off-street parking spaces. Mr. Marx said that the staff had worked very hard with them to obtain the six off-street spaces. Mr. Marx said that the off-site parking agreement was discontinued when Inner City Ministries abandoned the property. The property owner decided not to renew the parking agreement with the new occupants of the subject property.

Mr. Marx said that it was clear to the staff that this property was not operating in compliance with conditions #1 & 5 of the Board's prior approval. He said that the staff recommends that the Board schedule a revocation hearing for this conditional use. He said that the staff had not reached this conclusion lightly, and they tried to determine if there were other options available. However, the change in use at this location was so substantial that there was not even a remote possibility that this conditional use could be amended to bring it into compliance. That was often a course pursued when a use could possibly come back into compliance.

Mr. Marx said that it was important to understand that this ministry can be pursued in Lexington-Fayette County. There are zones where overnight accommodations can be provided either as a principal permitted use or as a conditional use. That option was available for other ministries at other locations. This particular location was in a B-4 zone, which does not allow for overnight accommodations, as that would be considered a "community center." As recently as 2009, the Board did approve a conditional use permit for a community center for homeless accommodations for men in an I-1 zone.

Mr. Marx said that this had widespread implications for how churches are regulated throughout the urban county. He said that notice to surrounding property owners was also an important consideration. He said that when Inner City Breakthrough Ministries requested their permit, neighbors had concerns about how the subject property would be used, and whether it was to be used as a homeless shelter. The staff had conversations with the pastor at that time; and on at least two occasions, he assured the staff that they would not have any facilities to accommodate homeless persons on an overnight basis. The staff passed that assurance along to the neighbors at that time, which subsequently created an issue about such assurances, and the overall notification process.

Mr. Marx said that there were more details provided in the report from his office to the Board.

Discussion – Chairman Stout asked if the church had been cited. Mr. Marx said that they had not; and when a conditional use was involved, a revocation hearing was the approach taken. Chairman Stout asked if the Board must take action before they are cited. Ms. Boland said that there was not a citation available for violation of a condition placed on a conditional use permit. The initial step, under the Zoning Ordinance, is for the enforcement officer to come back with a report to the Board regarding the violation, based upon the inspection results, and then request a revocation hearing to consider the violation.

Chairman Stout asked what type of notification was required. Mr. Marx replied that the only notification required is to the person with the conditional use permit, and any other directly related parties. He said that since this had been a neighborhood issue, the staff might consider taking the step to notify neighbors in this vicinity, at least within 400' of the location.

Chairman Stout asked if this use was an extension of the Hope Center. Ms. Boland replied that it was a free-standing entity operating under the conditional use permit granted to Inner City Breakthrough Ministries. It was not connected with the Hope Center.

Chairman Stout asked if the Board needed to approve a motion to hold a revocation hearing. Ms. Boland replied that if the Board finds that there is sufficient evidence presented to schedule a revocation hearing, which means that there would be an opportunity for both sides to present information as to whether a revocation was justified, then a motion would be in order to do so. She said that this issue today was whether there was enough concern to examine the issues associated with this use.

Rev. James McDonald, pastor of Immanuel Apostolic Church, addressed the Board at this time. He said that he was unaware that they were to operate under the conditions approved for the other church entity. He said that they hold church services at this location, but not at the times mentioned. He said that their entire ministry is to reach the homeless at this location. They are not even open at these times, and instead, they take the Gospel to the homeless, rather than them coming to this church. Rev. McDonald said that he had a church at 1422 North Forbes Road, and that he had ministries in Garrard and Boyle Counties.

Chairman Stout said that the issue was whether or not to hold a revocation hearing, and suggested that Rev. McDonald hold his case until that decision had been reached. He said that if a revocation hearing is scheduled, then Rev. McDonald would have to come back and present his case.

Mr. Marx said that, for the record, that when a Certificate of Occupancy was issued for Immanuel, the use was specifically conditioned upon the Board's prior approval. The prior case number was referenced, as were the conditions.

Action – A motion was made by Ms. White, seconded by Ms. Moore and carried unanimously to schedule a revocation hearing for May 18, 2012 for C-2010-20: Inner City Breakthrough Ministries.

Chairman Stout asked for all the information to be provided to the Board ahead of that meeting.

- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be May 18, 2012.
- VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 2:42 p.m.